

DETAILED ACTION

Withdrawn Objections/Rejections

1. Applicant's amendments and arguments filed on December 11, 2009 are acknowledged and have been fully considered.
2. Based on Applicants amendments and arguments, the outstanding rejections have been withdrawn and claims 9 and 11-15 [renumbered as 1-6] are allowed.

Reasons for Allowance

3. The following is an examiner's statement of reasons for allowance:

Applicant's have provided data in the instant specification and a 1.132 declaration on December 11, 2009 to overcome the 103 rejection or record.

Applicant's specification (pages 8-10) and a 1.132 declaration submitted on December 11, 2009 establishes synergistic activity of the three way combination at different concentrations within the instantly claimed ratio. Applicant tested the three way combination on different fungal strands and plant varieties, and calculated synergy using the Colby formula, which is a standard formula used by one of ordinary skill in the art in calculating synergism.

In the instant specification, Applicant tested the instant compounds separately (at 125 g/ha each) and in combination at the instant ratio (55+35+35 g/ha or 1:0.64:0.64). Applicant also tested the efficacy of the instant compounds separately (at 500g/ha

each) and in combination at the instant ratio (340+80+80 g/ha or 1:0.24:0.24). The active combination was found to have a higher efficacy value than the the compounds used separately at higher amounts.

Applicant further provided a 1.132 declaration on December 11, 2009 that discloses the active compounds tebuconazole, prothioconazole, and spiroxamine at a ratio of 1:1:1, 5:5:1, and 0.1:0.2:1. The active combination was tested on Puccinia tritricina (wheat). The active combination was found to have a higher efficacy value than that calculated using the Colby formula.

Applicant has established that the instantly claimed active combination provided synergistic results when applied at different ratios within the instantly claimed range. Therefore, the claimed invention is deemed free of the art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. All pending claims 9 and 11-15 [renumbered as 1-6] are allowed.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616